

THE COMPANIES ORDINANCE, 1984

ORDINANCE No. XLVII OF 1984

An Ordinance to consolidate and amend the law relating to companies and certain other associations

WHEREAS it is expedient to consolidate and amend the law relating to companies and certain other associations for the purpose of healthy growth of the corporate enterprises, protection of investors and creditors, promotion of investment and development of economy and matters arising out of or connected therewith;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:--

PART I PRELIMINARY

1. *Short title, extent and commencement.* (1) This Ordinance may be called the Companies Ordinance, 1984.

(2) It extends to the whole of Pakistan.

(3) This section shall come into force at once and the remaining provisions of this Ordinance shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint, and different dates may be so appointed for different provisions.

Synopsis

1. General.

2. Construction of Ordinance.

3. Insurance Companies.

1. **General.** The Companies Ordinance is a statute merely legislating for or regulating certain rights recognized under the common law in England.¹ The

1. AIR 1928 Mad. 571 (DB)

Company Laws, in the Sub-Continent, were patterned on the lines of their counterpart in England. British Parliament enacted English Companies Act in 1844, Pursuant to it, an Act for registration of Joint Stock Companies (Act XLIII of 1855) was promulgated in the Sub-Continent. This was followed by Indian Companies Consolidation Act, 1913. With the dawn of independence, this Statute was continued with necessary amendments and adaptation till 1984 when it was repealed by Companies Ordinance, 1984 (XLVII of 1984).² When any section is copied into Companies Ordinance from the English Statute it has got the same meaning as under the English Statute.³ Therefore in construing the Companies Ordinance it is permissible to refer to English case-law on the subject.⁴

2. Construction of Ordinance. The sections of the Ordinance must be read in such a way that they are consistent with each other.⁵

General law, how affected. The Ordinance being a special statute any special provision in the same will exclude the operation of a general provision under the general law which is at variance with it.⁶ But a mode of obtaining relief provided by the Act, which is not expressed to be the only mode open to an aggrieved party, has not the effect of taking away from such party any subsisting right of suit which he may have for obtaining redress for his grievance.⁷ Therefore pendency of legal proceedings between the parties is no bar to the initiation of proceedings under the Companies Ordinance, for the reason that the provisions of the Companies Ordinance are not subservient to proceedings in any other forum including civil litigation.⁸

3. Insurance Companies. An insurance company which is registered under the Act is bound by the provisions of this Act as well as the Insurance Companies Act.⁹

2. Definitions. (1) In this Ordinance, unless there is anything repugnant in the subject or context,--

- (1) "articles" means the articles of association of a company as originally framed or as altered in accordance with the provisions of any previous Companies Act, or of this Ordinance, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule;
- (2) "associated companies" and "associated undertakings" mean any two or more companies or undertakings, or a company

2. PLD 1996 Lah. 1 (DB).

3. AIR 1926 Lah. 624=8 Lah. 549 (DB)+54 Cal: W.N. 832 (DB).

4. 54 Cal. WN 832 (DB)+AIR 1950 East Punj. 111 (FB).

5. AIR 1927 Pat. 182=6 Pat. 132 (DB)

6. AIR 1943 Sind 89=ILR 1942 Kar. 504 (DB).

7. PLJ 1979 SC 380=1979 SCMR 62=NLR 1979 Civ. 822+AIR 1928 Mad. 571 (DB).

8. 1979 SCMR 62=PLJ 1979 SC 380=NLR 1979 Civ. 822.

9. AIR 1934 Cal. 36=35 Cri. L. Jour 492.

and an undertaking, interconnected with each other in the following manner, namely:--

- (i) if a person who is the owner or a partner or director of a company or undertaking, or who, directly or indirectly, holds or controls shares carrying not less than twenty per cent of the voting power in such company or undertaking, is also the owner or partner or director of another company or undertaking, or directly or indirectly, holds or controls shares carrying not less than twenty per cent of the voting power in that company or undertaking; or
- (ii) if the companies or undertakings are under common management or control or one is the subsidiary of another; or
- (iii) if the undertaking is a *modaraba* managed by the company;

and a person who is the owner of or a partner or director in a company or undertaking or, who so holds or controls shares carrying not less than ten per cent of the voting power in a company or undertaking, shall be deemed to be an "associated person" of every such other person and of the person who is the owner or a partner or director in such other company or undertaking, or who so holds or controls such shares in such other company or undertaking:

Provided that shares shall be deemed to be owned, held or controlled by a person if they are owned, held or controlled by that person or by the spouse or minor children of the person:

Provided further that--

- (i) directorship of a person or persons by virtue of nomination by the Federal Government or a Provincial Government or a financial institution directly or indirectly owned or controlled by such Government; or
- (ii) shares owned by the National Investment Trust or the Investment Corporation of Pakistan or a financial institution directly or indirectly owned or controlled by the Federal Government or a Provincial Government;

shall not be taken into account for determining the status of a company, undertaking or person as an associated company, associated undertaking or associated person;

- (3) "Authority" means the Corporate Law Authority constituted under section 11;
- (4) "body corporate" or "corporation" includes a company incorporated outside Pakistan, but does not include--
 - (i) a corporation sole; or
 - (ii) a co-operative society registered under any law relating to the registration of co-operative societies; or
 - (iii) any other body corporate, not being a company as defined in this Ordinance, which the Federal Government may, by notification in the official Gazette, specify in this behalf;

1. **Scope.** This clause which excludes a corporation sole from the definition of a "body corporate" or "corporation" cannot be construed as having the effect of incapacitating a corporation sole from being a share-holder of a company or executing a proxy.¹⁰

- (5) "book and paper", "book or paper" or "books of accounts" include accounts, deeds, vouchers, registers, writings and documents;
- (6) "chief executive", in relation to a company means an individual who, subject to the control and directions of the directors, is entrusted with the whole, or substantially the whole, of the powers of management of the affairs of the company, and includes a director or any other person occupying the position of a chief executive, by whatever name called, and whether under a contract of service or otherwise;
- (7) "company" means a company formed and registered under this Ordinance or an existing company;

10. AIR 1969 Kar. 254.

Synopsis

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|----------------------------|------------------------------------|
| 1. Company--meaning of. | 4. Company registered in Pakistan. |
| 2. Statutory Corporations. | 5. Private limited company. |
| 3. Co-operative Society. | |

6. Partnership and company--Distinction.

1. **Company--meaning of.** The word "company" wherever it is found in the Ordinance must be construed only in the sense in which it is defined in the interpretation section. That meaning cannot be departed from merely because the context may admit of a different interpretation. A different meaning can be given to the word only when the context requires it.¹¹

Under the law, joint stock company is a distinct entity.

Person completely different and distinct from its share-holders. A Company is a distinct entity separate from share-holders and Directors and liability of a company cannot be passed on to its Directors personally.¹² Company's share-holders do not own anything owned by company. Sale to a company can never be considered to be a sale to share-holders.¹³ Therefore although all the shares may be practically controlled by one person, in law a company is a distinct entity and it is not permissible or relevant to inquire whether the directors belonged to the same family or whether it is as compendiously described, a "one-man company".¹⁴ But where it appears that a company is in fact the private property of an individual, it becomes necessary to identify the real owner. This can be achieved by lifting veil or cracking open the corporate shell so as to go behind the corporate personality to the individual members and to determine the real state of affairs.¹⁵

A company is a juristic person with a right to sue and with a liability to being sued. It can act in its own name and is not a mere association of the share-holders in the sense in which a joint Hindu family is. When a public limited company is a creditor of another company, it cannot be said that some share-holders of the former company are creditors of the latter company.¹⁶ Where company was taxed and Director of the Company challenged constitutionality of the law which imposed the tax. It was held that any constitutional violation which company being a juristic person could assert could not be taken by a Director on its behalf. The Director could only challenge violation affecting his right as a share-holder.¹⁷

Promoter of Company. The fact as to whether a person was promotor of a Company has to be established by producing evidence like any other question of fact. Mere fact that a person made available foreign exchange for importing the machinery by itself was not sufficient for holding that he was the person who

11. 1903-2 Ch. 484.

12. 1993 CLC 1222.

13. NLR 1983 Tax 18 (2).

14. AIR 1936 Bom. 62=162 Ind Cas 126 (DB).

15. NLR 1984 SCJ 403=PLD 1983 SC 457.

16. AIR 1964 All. 473 (DB).

17. PLD 1983 SC 457=NLR 1984 SCJ 403.

brought into existence the venture and took various steps thereafter and thus brought about the incorporation of the Company.¹⁸

2. Statutory Corporations. A corporation is a body of men legally united so as to act as an individual. It is the genus of which Joint Stock Companies are species.¹⁹ But statutory corporation such as the National Bank of Pakistan is not governed by the Companies Act.²⁰

A corporation is the creature of statute. It will have only those powers which have been expressly conferred on it by the statute which has created it, and also all such other powers which may be necessary for effectively carrying out the purpose for which it was created, and also all such powers as may be incidental and necessary to the exercise of the powers expressly conferred on it. A corporation which has been given right to own land would necessarily have the power to alienate it for any interest it may deem fit, unless restrained therefrom either expressly or by implication, provided, however, such alienation be in the mode of conducting its business or operations.¹

3. Co-operative Society. Every company is not a Joint Stock Company. A joint stock company must have a permanent or fixed capital which a co-operative society does not have. Therefore a co-operative society is not a joint stock company.²

4. Company registered in Pakistan. The companies, which continued to work with their headquarter in Pakistan, after 15th of August, 1947 were to be treated, as companies registered under the Companies Ordinance. In the same manner, the Companies, which, on 15th August, 1947 had their registered offices in India, were to be considered as having been registered under the Companies Act (of India). Where any such Company did any business in the Dominion, in which it was not "registered" it could operate only as an "unregistered" company. It would be simply creating confusion if it were to be held, that a company registered under the Act of 1913 or an earlier Act, but which had no registered office in Pakistan, could still be taken to be a company validly registered in Pakistan, for purpose of section 443 of the Companies Ordinance.³ There is no provision in the Companies Ordinance which authorises the Registrar to transfer the name of a company from the category of indigenous companies to that of foreign companies. Where the domicile of a company was changed from national to foreign by the Registrar of Companies on the direction of the Commerce Minister. It was held that the shareholders have a right to demand that the Registrar, while registering a company as a foreign company, must act in accordance with law. Where he has acted contrary to law, a share-holder can demand that a *mandamus* should go to correct that error. It can, therefore, be said that a share-holder has an actual and personal interest in the performance by the Registrar of a public duty, namely, to maintain the register in accordance with law. Now, when the Registrar fails to exercise jurisdiction or

18. PLD 1988 Lah. 1=PLJ 1988 Lah. 42=NLR 1988 SD 403.

19. PLD 1956 Custodian (Pb) 12=8 DLR W.P. (Lah) 11.

20. PLJ 1974 Kar. 225.

1. AIR 1946 Cal. 416 (DB).

2. PLD 1968 Kar. 144 (DB).

3. PLD 1951 Lah. 293=PLR 1951 Lah. 357 (DB);

exercises his jurisdiction or acts in a manner which may be said to be on the face of it illegal or grossly improper, a writ of *mandamus* will lie for issue of a proper direction to the Registrar or even to correct his error.⁴

5. Private limited company. A private limited company may be owned by a few persons. It is something completely different in law from the persons who own it. Therefore a member of the company who is running it cannot be made personally liable for the debts of the company.⁵ But where it appears that a company is in fact the private property of an individual, it becomes necessary to identify the real owner. This can be achieved by lifting the veil or cracking open the corporate shell so as to go behind the corporate personality to the individual members and to determine the real state of affairs.⁶

6. Partnership and company--Distinction. A private company is like a firm in many ways, but if there are similarities between a firm and a private company there are also differences between them. For instance, in the absence of contract to the contrary, every partner is entitled under the Partnership Act to shares in the management of the firm. A partner has a right to share in the management of the firm so long as the firm lasts or, if the matter is governed by contract, for the period fixed in the contract. But a member of a company cannot possibly claim any right to manage it. But it has been also held that companies are really partnerships with the added attribute that a company is a juristic entity which is really a convenient method for the transaction of business and the acquisition and transfer of property.⁷ Therefore where members of a private company belonged to one family, same could be treated more or less as a partnership and the same principles as were applicable to a partnership would be applicable for winding up such a company.⁸ Thus where in a case of a private limited company one partner is shown to be acting adversely to the interest of the other or others, such partners, have a present right to dispossess the transgressor and waste, a necessary ingredient to be established for grant of equitable remedy of appointment of an Interim Receiver, is to be assumed to subsist.⁹

- (8) "company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;
- (9) "company limited by guarantee" means company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its winding up;

4. PLD 1960 Dacca 541 (DB).

5. PLD 1971 Kar. 379.

6. NLR 1984 SCJ 403=PLD 1983 SC 457.

7. PLD 1973 Kar. 491.

8. 1991 MLD 1225 (DB).

9. 1990 CLC 631.

1. **Company limited by guarantee.** A company limited by guarantee is generally a non-profit making association and such a Company is an alternative to a Company limited by shares. The Companies Ordinance permits the incorporation of a Company limited by guarantee, that is, a company in which the members agree that, in the event of liquidation of the company, they will subscribe an agreed amount. In effect, such members are guarantors of the Company's debts up to the agreed amount. As regards the working capital of such a Company, it generally comes from other sources, that is, endowments, grants, fees, subscriptions, etc.¹⁰

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(11) "the Court" means the Court having jurisdiction under this Ordinance;

1. **Scope.** High Court would be Court for the purpose of proceedings under sections 290, 412, 413 and cognizance taken by it would be in conformity with the provisions of section 476(4).¹²

(12) "debenture" includes debenture stock, bonds, ¹³[term finance certificates] and any other securities, other than a share, of a company, whether constituting a charge on the assets of the company or not;

1. **Debenture--what is.** A debenture is any document which either creates a debt or acknowledges it and is one of a series. The creation of a charge over the assets of a company issuing a debenture though usual, is not an essential requisite of a debenture. Thus there may be a mortgage debenture or a simple debenture which does not create any charge on any assets of the Company.¹⁴

The meaning of the term "debenture" as it occurs under this Act is in no way affected by the definitions of "securities" and "issue of capital" in the Capital Issues (Continuance of Control) Act, 1947. The essence of a debenture is originally an admission of indebtedness. Debenture is an instrument under seal evidencing a debt. It is not capital.¹⁵

In determining whether it is debenture or not the Court must look at the substance of the instruments itself and form the best opinion without seeking the assistance of any precise legal definition. The name by which the party has chosen to describe it is not a conclusive test.¹⁶

An instrument which contains words pointing it to be a bond or debenture should no doubt be prima facie assumed to constitute a personal liability. But at the same time the presence of these words is not conclusive and the prima facie assumption can be displaced by showing matters throwing a different light on the

10. PLD 1975 Kar. 128 (DB).

11. Subsection (10) omitted by Ord. 57 of 1984, S. 7.

12. NLR 1993 UC 476.

13. Subs. by Ord. 57 of 1984, S. 7.

14. AIR 1946 Bom. 18=ILR 1945 Bom. 863=47 Cri. L. Jour 361 (DB).

15. AIR 1958 Bom. 491=ILR 1958 Bom. 250 (DB).

16. AIR 1946 Bom. 18=ILR 1945 Bom. 863=47 Cri. L. Jour 361 (DB).

instrument. Thus where a clause in the articles of association of a company authorises it to borrow money and give bonds or debentures entitling their holders to some security on the money, property and effects of the company an instrument issued by the company under that clause cannot be said to create only a personal liability and not a security on the property of the company although such security may not, in view of the nature of the company, the duties which the directors have to perform and the language of articles, effect the powers of the directors to dispose of the property in the ordinary course of the business of the company.¹⁷

- (13) "director" includes any person occupying the position of a director by whatever name called;

1. **Director.** The expression "Director" includes a Managing Director.¹⁸ It also includes all persons having the direction of the undertaking whether as directors, managers or committee of managers. Therefore any two persons appointed as managing directors according to the provisions of the articles will be deemed to be a duly appointed governing body.¹⁹

Duty of Directors. Directors of Company are duty bound to act carefully in light of their knowledge and such knowledge as they should have gained by reasonable care and skill. Reasonable reliance on others is consistent with such requirement. A Director need not exhibit in performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience. The proper test to apply is whether or not the Director exceeded the powers entrusted to them or whether if they did not so exceed their power they were cognizant of circumstances of such character, so plain, so manifest and so simple of appreciation that no man with an ordinary degree of prudence acting on their own behalf would have entered into such transaction as they entered into. Where there was wilful preparation of false accounts so as to save the so-called 'goodwill' of the Company, in other words there was a deliberate act of defrauding the creditors for continuously receiving deposit from the public. The showing of profits when admittedly company was running in losses was another deceitful act in the series. Similarly, paying of dividend to the shareholders out of the capital and the money of the depositors, was not only an *ultra vires* act but also dishonest and deceitful act of the Directors who were doing so with knowledge and with a view to continue receiving deposits from the public. In such case the Director would render himself accountable to the shortfall in the assets suffered by the company. The shortfall represents the amount misappropriate.²⁰

- (14) "document" includes summons, notice requisition, order, other legal process, voucher and register;
- (15) "existing company" means a company formed and registered under any previous Companies Act;

17. (1878) 10 Ch. D 530+(1885) Ch. D. 715.

18. AIR 1960 Bom. 167 (DB).

19. 1947 Jaipur LR 219 (DB).

20. NLR 1993 UC 476.

- [(15-A) "financial institution" means an institution not less than fifty per cent of the share capital of which is held by the Federal Government or a Provincial Government, whether directly or through a company or corporation set up or controlled by such Government, and includes such other institutions or companies as the Federal Government may, by notification in the official Gazette specify for the purpose;]
- (16) "financial year", in relation to any body corporate, means the period in respect of which any profit and loss account or the income and expenditure account, as the case may be, of the body corporate, laid before it in general meeting, is made up, whether that period is a year or not;
- (17) "form" means a form set out in any of the schedules or prescribed;
- (18) "holding company" means a holding company as defined in section 3;
- (19) "listed", in relation to securities, means securities which have been allowed to be traded on a stock exchange;
- (20) "listed company" means a company or a body corporate or other body whose securities are listed;
- (21) "member" means, in relation to a company having share capital, a subscriber to the memorandum of the company and every person to whom is allotted, or who becomes the holder of, any share, scrip or other security which gives him a voting right in the company and whose name is entered in the register of members, and in relation to a company not having a share capital, any person who has agreed to become a member of the company and whose name is so entered;

Synopsis

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| 1. Member. | 7. Withdrawal of application for shares. |
| 2. Joint share-holders. | 8. Specific performance of contract for allotment of shares. |
| 3. Eligibility for membership. | 9. Transferee of shares. |
| 4. Subscription to membership of association. | 10. Person becoming entitled to shares by succession. |
| 5. Acquisition of membership by application and allotment. | 11. Person holding out as member. |
| 6. Conditional application for shares. | |

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|----------------------------------------------|--------------------------------|
| 12. Entry in register of members. | 14. Repudiation of contract. |
| 13. Rights and liabilities of share-holders. | 15. Termination of membership. |

1. **Member.** Apart from the subscribers of the memorandum of a company and other person specifically named in this sub-section how a person can become a member of a Company is left to agreement between him and the Company which means that the question whether a person is a member of any particular Company or not must depend upon the Articles of Association.²

The question whether a particular person has agreed to become a member of a company is a question of fact.³ Persons whose names appear in shares or members register maintained by Company alone are covered by definition of "member" under section 2(21). Such persons only would be entitled to vote at Annual General Meeting.⁴

The words "member", "share-holder" and "holder of a share" have been used interchangeably in the Companies Ordinance. The words "holder of a share" are equal to the word "share-holder", and the expression "holder of a share" denotes, in so far as the company is concerned, only a person who, as a share-holder, has his name entered on the register of members.⁵

Official Trustee. In view of the provisions of sections 6 and 14 of the Official Trustees Act, the Official Trustee as a corporation sole is entitled to be entered as a share-holder in the registers of a company, and when he has been so entered he is a member of the company entitled to exercise all the auxiliary rights attached to the membership.⁶

Person not liable to pay for shares. Shares allotted to a person under a contract in consideration of his promising to do certain things cannot be treated as unpaid shares and the allottee does not cease to be a member merely because he has failed to do the things promised by him and there is a failure of consideration.⁷

2. **Joint share-holders.** In the case of public Company every joint share-holder is a member. When three or four persons agree to accept shares in a Company; they do not constitute a single member.⁸ Joint holders of shares are entitled to arrange among themselves which of them shall stand first on the register of members and exercise on behalf of all, the right of voting which belongs to them collectively. So also they can split their holding into two joint holdings with their names in different order and when they do so the company cannot refuse to alter the register to give effect to that arrangement.⁹

2. PLD 1979 SC 723=PLJ 1979 SC 13.

3. 36 Bom. 557.

4. NLR 1987 Civ. 639=1987 CLC 1943.

5. AIR 1959 SC 775.

6. AIR 1959 Ker 254 (Such an entry does not amount to recognition of a notice of trust contrary to the provisions of section 153 of the Act).

7. AIR 1957 Punj. 261=ILR 1957 Punj. 1505 (DB).

8. AIR 1953 Bom. 433=ILR 1953 Bom. 877 (DB).

9. 1919-1 Ch. 225.

3. Eligibility for membership. All persons capable of entering into a contract can be members of a company. Even a minor can be member of a company by acquiring or holding shares provided they are fully paid up and are subject to no obligation.¹⁰ Where minors acquire shares which are not fully paid up and the application for allotment made by the father who also paid for the shares in full indicates clearly that the allottees are minors and the company with open eyes allotted them, the father cannot be deemed to have contracted for the shares and placed on the list of contributories.¹¹ But where a person bought shares from a company in the names of all the members of his family and made payments towards them himself and the company was at no time informed of the fact that some of those persons were minors; it was held that the allotment of the shares did not fail on the ground of minority of the allottees and hence the liability for contribution arising from the holding of those shares could be enforced. The fact that the person who bought the shares was himself the chairman of the company was an absolutely irrelevant consideration.¹²

Company cannot be its own member. A company cannot be a member of itself. It is inconsistent with the essential nature of a company by becoming a member of itself to become its own debtor in respect of calls and be placed in the list of contributories in its own liquidation.¹³

4. Subscription to membership of association. The signatories to the Memorandum of Association become the first members of the Company from the date of incorporation.¹⁴ Membership in the case of a subscriber to the memorandum does not depend upon allotment of shares to him.¹⁵ A person by signing a Memorandum of Association contracts to take the number of shares of which he subscribes and thereafter he continues to be a member even though no shares had been allotted to him and the company itself had ceased to treat him as a member.¹⁶

The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act.¹⁷

10. AIR 1959 Punj. 106 (Hence allotment of shares to minors does not become invalid merely on the ground of the minority of the allottees)+29 Com Cas 191 (Punj)+AIR 1914 Bom. 128 (DB). (Case decided under the Act of 1882).

11. AIR 1956 Punj. 41 (DB).

12. AIR 1958 Assam 86.

13. AIR 1957 Cal. 293 (DB).

14. AIR 1934 Sind 39 (*Affirmed in* AIR 1938 Sind 187)+28 Com Cas 155 (Punj)+AIR 1948 Oudh 197 (DB)+AIR 1933 All. 334 (DB). (On his death his heirs can be placed on the list of contributories)+108 Ind Cas 451 (All). (He cannot avoid the effect of his signing the memorandum by a plea of having done so under certain reservations).

15. AIR 1934 Sind 39+AIR 1948 Oudh 197 (DB)+28 Com Cas 155 (Punj)+AIR 1955 Madh B 166 (DB)+AIR 1955 Punj. 228 (AIR 1939 Mad. 498, *Dissented*).

16. NLR 1982 Civ. 422=PLJ 1983 Kar. 314=1982 CLC 2198 (Kar)+(1871) 13 Eq. 228.

17. PLD 1990 SC 1092=PLJ 1990 SC 543=1990 PSC 1122.

Registration of name not necessary. The subscriber to the memorandum is to be treated as having become member by the very fact of subscription.¹⁸ The entry of his name on the register of members is not necessary to confer the status of a member on a subscriber to the Memorandum of Association.¹⁹

5. Acquisition of membership by application and allotment. An application for shares merely amounts to an offer to take shares.²⁰ It results in a concluded contract only when it is accepted by the company by the allotment of shares,¹ and the allotment is communicated to the applicant.² It follows that the title to the shares, the right to receive the share certificates and be placed on the register of shareholder accrue to the applicant only when the letter of allotment is communicated to him. However the issue of certificate of shares is not necessary to constitute a person a share-holder.³

Placing name of person on register of company. By agreeing with a company to take a share or shares and being thereon placed on the register of members, a person becomes a member or share-holder of that company.⁴ It must however be noted that the mere placing of the name of the applicant for shares in the register of share-holders in the absence of communication of allotment is insufficient to bind the applicant with a contract in respect of the shares.⁵

Irregularity in procedure of allotment. Any irregularity in the procedure followed in allotting shares will not entitle the company to avoid the allotment because as between the applicant and the company the former is entitled to assume that the necessary procedure required under the articles was complied with.⁶ Thus the acceptance by the directors of the offer to take shares endorsed on the application and signed by them should be taken as a valid acceptance unless there is conclusive evidence to the effect that the directors in fact had not consulted each other before endorsing the acceptance.⁷

6. Conditional application for shares. An application for shares made upon a condition precedent does not become binding on the applicant until the condition has been complied with or its performance waived.⁸ The condition precedent attached to an application can be held to be waived where the allotment is made without fulfilment of the condition and the subsequent conduct of the applicant shows acquiescence.⁹

18. AIR 1955 Madh. B 166 (DB).

19. AIR 1948 Oudh 197 (DB)+AIR 1955 Madh B. 166 (DB)+AIR 1926 All. 550.

20. AIR 1957 Punj. 261 = ILR 1957 Punj. 1505 (DB).

1. PLD 1970 Dacca 155 (DB)+AIR 1958 Bom. 198 (DB).

2. AIR 1930 PC 134 = AIR 1957 Punj. 261 (DB)+AIR 1950 All. 508 (DB)+AIR 1933 Mad. 320. (The mere entry of his name in the company's register of members cannot therefore establish the allotment of the shares to him).

3. AIR 1957 Punj. 261 = ILR 1957 Punj. 1505 (DB).

4. AIR 1948 Oudh 197 = 23 Luck. 210 (DB).

5. AIR 1933 Mad. 320 = 56 Mad. 391 (DB) + (1868) 3 Ch App. 40.

6. AIR 1946 Mad. 35 = ILR 1945 Mad. 728.

7. ILR 1955 Mad. 528.

8. AIR 1957 Punj 261 (DB) + 36 Bom. 557 (Case under the Act of 1882).

9. AIR 1936 Lah. 700 = 17 Lah. 793 (DB) + AIR 1935 Lah. 691 (DB).

Non-fulfilment of condition precedent—remedy. Upon an application for shares made subject to a condition precedent, the applicant is entitled, if the condition is not fulfilled, to get back the money paid by him as a creditor. Hence in the event of the company going into liquidation, he cannot be asked to pay the balance due on the shares as he had never become a member at all.¹⁰

Collateral or subsequent condition. A concluded agreement between an applicant for shares and the company comes into existence immediately when shares are allotted and registered in his name and the legal effect of that agreement, that is, the applicant's position as a share-holder, will in no way be affected by the non-fulfilment of any collateral or subsequent condition attached to the application for shares.¹¹

7. Withdrawal of application for shares. An application for allotment of shares can be revoked before the company makes the allotment and communicates the same to the applicant.¹² It has been held that a person is entitled to revoke his application for shares in a company when, before the date of the allotment the prospectus of the company is changed in material particulars.¹³

Allotment not made within reasonable time. An allotment of shares must be made within a reasonable time. A person is not bound to accept an allotment made after the lapse of a reasonable time.¹⁴ But acceptance of shares allotted after a considerable delay amounts to an acquiescence on the part of the applicant and he cannot thereafter revoke his application and refuse to pay the share money.¹⁵

8. Specific performance of contract for allotment of shares. On the acceptance by or on behalf of the company of the offer to take shares contained in an application, an executory contract as between the company and the applicant, for the allotment of the shares by the former and to take the same by the latter, comes into being.¹⁶ The company can maintain a suit for-specific performance against the applicant if he fails to take the shares in accordance with his contract. Similarly, the applicant would become entitled to sue the company on its failure to allot the shares agreed upon.¹⁷ A Court has jurisdiction to decree specific performance of a contract either to take shares or to allot shares subject to the same principles which govern suits for specific performance.¹⁸

9. Transferee of shares. A transferee of a share or shares of a company when he is placed on the register of members of the company becomes a member or

10. 35 All. 538 (Case under the Act of 1882).

11. 36 Bom. 557 (Case under the Act of 1882)+AIR 1930 All. 357 (DB). (The applicant can only sue to enforce the collateral condition if the company fails to fulfil it).

12. AIR 1933 Rang. 388+AIR 1919 Lah. 351 (DB).

13. AIR 1942 Mad. 656=ILR 1943 Mad. 133.

14. AIR 1936 Lah. 16+AIR 1934 Bom. 97 (DB)+AIR 1956 Pepsu 98 (Applicant has the right to repudiate the shares of different value allotted to him without his consent and after a long lapse of time).

15. 1955 Mad W N 80.

16. AIR 1930 PC 134+ILR 1955 Mad. 528 (DB).

17. ILR 1957 Punj 1505 (DB).

18. ILR 1955 Mad. 528 (DB)+AIR 1950 Bom. 149 (Relief as in every case of specific performance is in the discretion of the Court).

share-holder of that company.¹⁹ However a transfer of shares must be operative to divest the transferor of his rights of membership and vest them in the transferee. Hence a sale of shares which is void in law because it is in favour of a person who is under legal incapacity to purchase, does not bring about that result.²⁰

Participants, agreement between, for transfer of shares. Benefit of clause in agreement that shares intended to be sold by one participant would first be offered to other participants and only on their refusal to buy them would these shares be offered to a stranger or outsider, is available to purchaser of shares from one participant who transfers his shareholding with concurrence of other participants. It would be wrong to contend that purchaser would be entitled only to right to collect dividend on shares but not to pre-emptive right available to seller or participant.¹

10. Person becoming entitled to shares by succession. A person entitled to the shares of a deceased or bankrupt becomes himself the member or share-holder when his name is put on the register of members.² This is done when such person takes necessary steps under the Articles of Association of the Company to get his name placed on the Register of the Company. If he does not do so, the Companies Ordinance does not provide any machinery for making him a member. Therefore where the heirs of a deceased member did not take any steps under the Articles of the company to become members of the company, they were held to have not become members by succession alone.³

11. Person holding out as member. If a person allows his name to be on the register of members or otherwise holds himself out or allows himself to be held out as a member or share-holder, he acquires that status.⁴ Thus a transferee of shares, though not for value but only for the purpose of possessing qualification for directorship, is a member. He cannot repudiate his liability as a share-holder and member after having held himself out as such.⁵ A minor who after attaining majority continues to receive the benefit under the shares allotted to him during his minority will be estopped from denying that he is a share-holder as against the liquidator.⁶

12. Entry in register of members. An agreement by a person to take shares makes him a share-holder and his name must be entered in the register.⁷ In the case of persons who are allotted shares on their application, entry in the register of members is a condition precedent to their obtaining the status of a member.⁸ The

19. AIR 1948 Oudh 198=23 Luck 210 (DB).

20. AIR 1943 Mad. 111.

1. NLR 1987 CLJ 130=1987 CLC 272.

2. AIR 1948 Oudh 197=23 Luck. 210 (DB).

3. PLD 1979 SC 723=PLJ 1979 SC 13.

4. AIR 1948 Oudh 197=23 Luck. 210 (DB).

5. AIR 1936 Lah. 480=17 Lah. 576.

6. AIR 1914 Bom. 128=39 Bom 331 (DB).

7. AIR 1932 PC 212.

8. AIR 1950 Bom. 149=ILR 1950 Bom. 192.

company deals only with the person whose name appears on its registers as a member and the holder of certain shares.⁹

Refusal to register transfer of shares. In case of refusal by the company to register the name of a member, he has a right of appeal. But the power to entertain the appeal is not unrestricted; being an alternative to the right to approach the civil Courts, it must be subject to the same limitations which are implicit in the exercise of the power by the civil Court under section 152. It must however be noted that a clause in the Articles of Association which invests the director with absolute discretion to refuse to register shares is an incident of the contract binding upon the transferor, and registration of transfer or transmission cannot therefore be insisted upon as a matter of right. However, a party can maintain a petition for an order for rectification of the register of share-holders. In the hearing of such a petition, normally the Court will presume that the exercise of the power was bona fide.¹⁰

Shares sold by auction under orders of Court. Even in case of auction of shares by order of Court it is reasonable for the directors of a private limited company to bona fide seek shelter behind the usual articles conferring jurisdiction on them to oust such stranger whose presence, they might think, would be dangerous to the existence or the working of the company. Any order passed by the Court, therefore, compelling them to do so, would amount to defeating the very intention of the legislature and purpose of law. The only restriction on this power recognised by law is that refusal must not be arbitrary or mala fide though the onus of it will be on the person so alleging. In this view of the matter, the only lawful reasonable and useful thing for any Court auctioneer is to give notice to the directors of a company, of the auction, and in case they are not prepared to purchase those shares in an open auction, and if they or other members are also not willing to purchase or pre-emption a notice of the sale immediately thereafter, then the Court may direct the directors to register the auction-purchaser as a share-holder on the assumption that the directors' refusal was arbitrary or mala fide.¹¹

13. Rights and liabilities of share holders. There are two kinds of right for a member of the company, one the individual membership right, and the other, the corporate membership rights. So far as the corporate membership rights are concerned a share-holder can assert those rights only in conformity with the decision of the majority of the share-holders. An individual membership right is a right to maintain himself in full membership with all the rights and privileges appertaining to that status. This right implies that the individual share-holder can insist on the strict observance of the legal rules, statutory provisions and provisions in the memorandum and articles which cannot be waived by a bare majority of share-holders.¹² In fact the rights given to the members by statute cannot be taken away or modified by any provision in the memorandum or articles.¹³ In this case, the Court, without deciding the point, and, proceeding on the assumption that a

9. AIR 1943 Mad. 111 (A sale of the shares by him by itself would not relieve him of his liability as a member. His liability continues until his name is removed from the register and the transferee's name is put on it).

10. AIR 1961 SC 1669.

11. 1982 Law Notes 430 (Lah).

12. AIR 1965 Kerala 68 + AIR 1951 Mad. 831 + AIR 1959 Kerala 254 + 1877-6 Ch D 70.

13. 1898-1 Ch 122.

member who had consented to the passing of a resolution would not be disentitled to relief by way of a declaration that the resolution was *ultra vires* and an injunction restraining the company from acting upon it; held that very strong case alone would induce it to give such relief to a plaintiff who brought his action after a long time, having contented himself in the meanwhile to continue as a member and enjoy the benefits under that resolution.¹⁴

A share-holder as a member of the company has certain corporate rights and certain corporate liabilities.¹⁵ Persons whose names are put on the register of members in the absence of any authority from them incur no liability thereby.¹⁶

Interest in property. A registered share-holder gets a vested interest in the property of the company as well as certain other rights and is also subject to the burdens attached thereto.¹⁷ It must however be noted that the position of share-holders in a company is not analogous to the position of the partners of firm *inter se*. He has no interest or rights in the assets of the company while it is a going concern. Even when it is wound up he can participate only in the assets which are left over after the winding up but not in the assets as a whole.¹⁸ Moreover the share-holders have practically no voice in the management of the company.¹⁹

Right of member to sue the company. A member has a right to sue in respect of a wrong done to him individually by the company,²⁰ or to enforce his individual rights against the company, such as his right to vote or his right to stand as a director of the company at an election.¹ It must however be noted that a share-holder has only a right to ask for a declaration of his own legal character as a share-holder when the company denies him that status or is interested in denying that character. He cannot maintain a suit for a declaration that the allotment of shares to certain persons is illegal and that they cannot act as share-holders.²

Wrong done to company. A member has no right to institute a suit to seek a remedy for a wrong done to the company unless he has been authorised by the majority to take corporate action in the matter.³

Liability to pay price of share. There is a liability upon every person who has agreed to become a share-holder to pay for the price of those shares.⁴ However an express allotment of shares to a subscriber to the Memorandum of Association is necessary in order to give rise to the liability to pay up value of the shares.⁵

14. 1910-2 Ch 382.

15. AIR 1943 Mad. 111.

16. 1894-2 Ch 474.

17. AIR 1914 Bom. 128=39 Bom. 331 (DB).

18. AIR 1955 SC 74+1955-1 SCR 876.

19. 1898-1 Ch 122.

20. AIR 1953 Mad. 520 (DB) (But the other share-holders who are not the wronged parties cannot sue on his behalf).

1. AIR 1951 Mad. 831 (DB)+AIR 1965 Kerala 68.

2. AIR 1932 Cal. 714 (DB).

3. AIR 1951 Mad. 831=ILR 1949 Mad. 808 (DB).

4. AIR 1950 All. 508=ILR (1951) 2 All. 228 (DB).

5. AIR 1939 Mad. 498.

A call for share money made upon a transferee before his name is put on the register of members is ineffective and invalid.⁶

Right to set off. By an agreement with the company a member can set off what is due to him by the company against the money due by him on his share.⁷ But he is not entitled to set off against the debt due from him to the company what he might receive on winding up.⁸

14. Repudiation of contract. A person induced by fraudulent misrepresentations or concealment to buy shares from a company and put on its register of members cannot deny his membership without avoiding the contract and having his name removed from the register within a reasonable time. The fraud inducing the contract renders it only voidable and not void in the sense that it brought about no contractual relationship at all between him and the company at any time.⁹

Repudiation of contract on ground of fraud or misrepresentation. A person induced to apply for shares of a company owing to misrepresentation or fraud must repudiate or avoid the contract within reasonable time and before commencement of proceedings for winding up.¹⁰ Thus an allottee of shares, who was not informed of the retirement of certain directors mentioned in the prospectus before the allotment, is entitled to rescind his contract of allotment.¹¹ A person who agrees to become a share-holder of a projected company provided its memorandum and articles would include certain clauses suggested by him must take care to see that his suggestions have been given effect to even before he makes his application for allotment. If he fails to do so and the shares are allotted to him on his application he cannot afterwards, when he is sought to be placed on the list of contributories, repudiate the contract on the ground of misrepresentation.¹² It must however be noted that a subscriber to the memorandum has no right of rescission of an agreement to take the shares, even before its registration on the ground of any misrepresentation of the promoter.¹³

Misrepresentation by unauthorized person. Action for rescission of contract of purchase of shares will not lie on the ground of misrepresentation by a person who has no authority to make any representation on behalf of the company.¹⁴

No repudiation after liquidation proceedings. A person who accepts the transfer of qualification shares for becoming a director and thereafter as such director participates in the management of the company holds himself out as a properly constituted share-holder and member of the company and would be

6. AIR 1952 Pepsu 47.

7. AIR 1942 Mad. 95 = ILR 1942 Mad. 230 (DB).

8. AIR 1938 Mad. 962 (DB).

9. (1867) 2 H L 325.

10. AIR 1938 All. 193 = ILR 1938 All. 301.

11. AIR 1930 Mad. 325.

12. AIR 1941 Cal. 143 = ILR (1940) 2 Cal. 175.

13. AIR 1937 Lah. 527 = ILR 1937 Lah. 294.

14. AIR 1937 Lah. 644.

estopped from repudiating that position at the time of liquidation on the ground that the transfer was merely a colourable transaction.¹⁵

15. Termination of membership. A resolution of the company expelling a member in the absence of power under the articles is ineffective to terminate his membership.¹⁶

Mutual Benefit Fund. The membership in a mutual benefit fund is not terminated by the mere appropriation of the share capital of a member towards the amount due by him to the fund, in the absence of any forfeiture.¹⁷

- (22) "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of the provisions of any previous Companies Act or of this Ordinance;
- (23) "*modaraba*" and "*modaraba* company" have the same meaning as in the *modaraba* Companies and Modaraba (Floatation and Control) Ordinance, 1980 (XXXI of 1980);
- (24) "officer" includes any director, chief executive, managing agent, secretary, or other executive of the company, howsoever designated, but, save in sections 205, 220 to 224, 260, 261, 268, 351, 352, 412, 417, 418, 474 and 482, does not include an auditor;

Synopsis

1. Office.
2. Share-broker
3. Auditor

1. Officer. The word 'officer' is of wide connotation and includes assistant secretaries or agents of all the branches of a company.¹⁸ In order to determine whether a person holds an office or place of profit under a company, the following tests may be applied, namely: (1) What authority has the power to make an appointment to the office concerned. (2) What authority can take disciplinary action and remove or dismiss the holder of the office? and (3) By whom and from what source is his remuneration paid? Of these the first two are more important than the third one.¹⁹

Officer of more than one company. Where one person is an officer of two companies, his knowledge, as officer, of one company cannot be imputed to the

15. AIR 1936 Lah. 480=17 Lah. 576.

16. AIR 1941 Mad. 354.

17. AIR 1936 Mad. 97 (DB).

18. AIR 1958 Andh Pra. 756=ILR 1958 Andh Pra. 651 (DB).

19. AIR 1962 Bom. 92+AIR 1958 Bom. 314.

other company in the absence of duty imposed on the officer to communicate it to the other company.²⁰

2. **Share-broker.** The share-broker of a company has nothing to do with the management of a company and may have no knowledge of what is being done inside the company's office. Hence he cannot be treated as an officer, for the purposes of starting misfeasance proceedings against him.¹

3. **Auditor.** Auditors cannot be treated as officers of the company unless it is so provided by the Articles of Association. Where the articles of a company which granted immunity to its Officers in respect of their non-wilful acts and defaults did not mention the auditor as an officer of the Company. It was held that the auditor was not entitled to the protection granted by the articles.²

³[(25) "participatory redeemable capital" means such redeemable capital as is entitled to participate in the profit and loss of a company;]

(26) "prescribed" means,--

(a) as respects the provisions of this Ordinance relating to the winding up of companies and other matters requiring to be determined or decided by the Court, prescribed by rules made by the Supreme Court in consultation with the High Courts or, where the Supreme Court advises the Federal Government to do so, by the Federal Government in consultation with the High Courts; and

(b) as respect the other provisions of this Ordinance, prescribed by rules or regulations made by the Federal Government after previous publication in the official Gazette;

(27) "previous Companies Act" includes any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (X of 1866), or the Acts repealed thereby, the Indian Companies Act, 1866 (X of 1866), the Indian Companies Act, 1882 (VI of 1882), the Indian Companies Act, 1913 (VII of 1913), or any law corresponding to any of those Acts and in force in any of the territories now constituting Pakistan before the extension of the Companies Act, 1913 (VII of 1913), to such territories;

(28) "private company" means a company which, by its articles,--

20. AIR 1941 Bom. 108=ILR 1941 Bom. 273 (DB).

1. AIR 1938 Mad. 154=ILR 1938 Mad. 192 (DB).

2. AIR 1929 All. 826 (DB).

3. Subs. by Ord. 57 of 1984, S. 7.

- (i) restricts the right to transfer its shares, if any;
- (ii) limits the number of its members to fifty not including persons who are in the employment of the company; and
- (iii) prohibits any invitation to the public to subscribe for the shares, if any, or debentures of the company:

Provided that, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member;

Synopsis

- | | |
|------------------------------------------------------------------|-------------------------------------------------|
| 1. Private Limited Company. | 3. Transfer of shares of company. |
| 2. Company cannot issue invitation to public to purchase shares. | 4. Suit by joint share-holders against company. |

1. Private Limited Company. A private limited company is one restricting right to transfer its shares, limiting number of its members to fifty (not including persons in its employment) and prohibiting any invitation to public to subscribe for its shares or debentures.⁴ It may be owned by a few persons. It is something completely different in law from the persons who own it. Therefore the member of the company who is running it cannot be made personally liable for the debt of the company.⁵

2. Company cannot issue invitation to public to purchase shares. A private Company is prohibited from inviting the public to subscribe for its shares and debentures.⁶ If it issues an invitation to the public to subscribe for shares or debentures it ceases to be a private company and becomes a public company liable to fulfil the obligations imposed upon a public company by the Ord. and the rules.⁷ But where a company offers shares to selective persons it cannot be said to be extending an invitation to buy shares to the "public". In all cases the determination of the question of an offer being made to public, depends upon the facts and language of the notice in the particular circumstances of each case.⁸

3. Transfer of shares of private limited company. In a private company there can be fifty sets of joint holder and joint holders of each set shall be treated as a single member and the total number of members will be considered to be fifty for the purposes of that requirement. That is all the purpose of the proviso and therefore it cannot be said to create any ban against the transfer of shares to a joint holder in his individual capacity. Such a transfer is not prohibited by any provision in the Ordinance.⁹

4. PLJ 1986 Lah. 408=PLD 1986 Lah. 346.

5. PLD 1971 Kar. 279.

6. PLD 1986 Lah. 346=PLJ 1986 Lah. 408.

7. AIR 1946 Bom. 18=ILR 1945 Bom. 863=47 Cri. L. Jour 361 (DB).

8. AIR 1959 Punj. 196.

9. AIR 1960 Punj. 455=ILR (1960) 1 Punj. 969 (DB).

Transfer by liquidator. Where an auction-purchaser from Liquidator of a company seeks registration of shares in his name, it is reasonable for the directors of a private limited company to bona fide seek shelter behind the usual articles conferring jurisdiction on them to oust such strangers whose presence, they might think, would be dangerous to the existence or the working of the company. Any order passed by the Court, compelling them to do so, would amount to defeating the very intention of the legislature and purpose of law. The only restriction on this power recognised by law is that the refusal must not be arbitrary or mala fide though the onus of it will be on the person so alleging. In this view of the matter, the only lawful, reasonable and useful thing for any court-auctioneer is to give notice to the directors of a company, of the auction, and in case they are not prepared to purchase those shares in open auction, and if they or other members are also not willing to purchase or pre-empt, on a notice of the sale immediately thereafter, then the Court may direct the directors to register the auction-purchaser as a share-holder on the assumption that the directors' refusal was arbitrary or mala fide.¹⁰

4. Suit by joint share-holders against company. Where two or more persons hold one or more shares in a private company jointly they shall be treated as a single member, and therefore if any action is taken it should be by them jointly or the others may be impleaded as defendants.¹¹

(29) "prospectus" means any document described or issued as prospectus, and includes any notice, circular, advertisement, or other communication, inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate, or inviting deposits from the public, other than deposits invited by a banking company or a financial institution approved by the Federal Government, whether described as prospectus or otherwise;

(30) "public company" means a company which is not a private company;

¹²[(30-A) "redeemable capital" includes finance obtained on the basis of participation term certificate (PTC), musharika certificate, term finance certificate (TFC), or any other security or obligation not based on interest other than an ordinary share of a company, representing an instrument or a certificate of specified denomination, called the face value or nominal value, evidencing investment of the holder in the capital of the company on terms and conditions of the agreement for the issue of such instrument or certificate or such other

10. NLR 1982 Civ. 541 (Lah).

11. 1983 CLC 162 (Kar).

12. Ins. by Ord. 57 of 1984, S. 7.

certificate or instrument as the Federal Government may, by notification in the official Gazette, specify for the purpose;

- (31) "registrar" means a registrar, an additional registrar, a joint registrar, a deputy registrar or an assistant registrar, performing under this Ordinance the duty of registration of companies;
- (32) "scheduled bank" has the same meaning as in the State Bank of Pakistan Act, 1956 (XXXIII of 1956);
- (33) "secretary" means any individual appointed to perform the secretarial, administrative or other duties ordinarily performed by the secretary of a company;
- ¹³(34) "security" means any share, scrip, debenture, participation term certificate, modaraba certificate, musharika certificate, term finance certificate, bond, pre-organization certificate or such other instrument as the Federal Government may, by notification in the official Gazette, specify for the purpose;]
- (35) "share" means share in the share capital of a company;

1. **Share.** The word "share" in its natural and ordinary meaning would include stock as well and that word should be understood only in that sense unless that word is used in an Act, *a vox signata*, in a sense exclusive of stock.¹⁴

Bonus share. A bonus share falls within the definition of share. Its face value determines its cost.¹⁵

- (36) "special resolution" means a resolution which has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy at a general meeting of which not less than twenty-one days notice specifying the intention to propose the resolution as a special resolution has been duly given:

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days notice has been given;

- (37) "stock exchange" means a stock exchange registered under the Securities and Exchange Ordinance, 1969 (XVII of 1969);

13. Subs. by Ord. 57 of 1984, S. 7.

14. (1875) 7 H L 717.

15. PLD 1973 Lah. 834=PLJ 1973 Lah. 491.

(38) "subsidiary company" or "subsidiary" means a subsidiary company as defined in section 3;

(39) "Table A" means Table A in the First Schedule ¹⁶[.]

¹⁷* * * * *

(2) The expression "commencement of this Ordinance" in any provision of this Ordinance means the coming into force of that provision by virtue of a notification under sub-section (3) of section 1.

3. *Meeting of "subsidiary" and "holding company"*. (1) For purposes of this Ordinance, a company or body corporate shall be deemed to be a subsidiary of another if--

- (a) that other company or body corporate directly or indirectly controls, beneficially owns or holds more than fifty per cent of its voting securities or otherwise has power to elect and appoint more than fifty per cent of its directors; or
- (b) the first mentioned company or body corporate is a subsidiary of any company or body corporate which is that other's subsidiary.

(2) For the purpose of this Ordinance, a company shall be deemed to be another's holding company if, but only if that other is its subsidiary.

1. **Subsidiary and parent company-relationship.** A subsidiary company is not the agent of the parent company, but is an entirely separate entity. Its acts are not the acts of the parent company and the parent company is not responsible for its acts or defaults.¹⁸

Management of Subsidiary Company. Where Board of Directors of the subsidiary company was the same as that of the principal company. Board of Administrators which was regulating the affairs of the principal company, was, thus entitled in law, to manage the affairs of the subsidiary company.¹⁹

4. *Ordinance not to apply to certain corporations.* Nothing in this Ordinance shall apply to--

- (i) a trading corporation owned or controlled by a Province and carrying on business only within that Province; or

16. Subs. by Ord. 57 of 1984, S. 7.

17. Omitted by Ord. 57 of 1984, S. 7.

18. 1984 CLC 2170 (DB)+(1951) 2 KB 366+1897 AC 22.

19. 1993 CLC 1915=NLR 1993 Civ. 388.

- (ii) a co-operative society; or
- (iii) a university.

5. *Application of Ordinance to non-trading companies with purely provincial objects.* The powers conferred by this Ordinance on the Federal Government or Authority shall, in relation to companies which are not trading corporations and the objects of which are confined to a single Province, be the powers of the Provincial Government.

6. *Ordinance to override memorandum, articles, etc.*--Save as otherwise expressly provided herein,--

- (a) the provisions of this Ordinance which come into force by virtue of a notification under sub-section (3) of section 1 shall have effect notwithstanding anything contained in the memorandum or articles of a company, or in any contract or agreement executed by it, or in any resolution passed by the company in general meeting or by its directors, whether the same be registered, executed or passed, as the case may be, before or after the coming into force of the said provisions; and
- (b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the aforesaid provisions of this Ordinance, become or be void, as the case may be.

1. **Statutory rights not affected by Articles.** The statutory rights of companies whether public or private cannot be taken away or modified by the Memorandum or Articles of Association.²⁰ Thus where it was provided in the Articles of Association of a company that a notice of a meeting would only be valid when sent by registered post. As Regulation 79 provides that notice may be given personally or by post. Therefore if the Article in question invalidates all notices sent otherwise than by registered post card, the article is in conflict with the Regulation and to that extent invalid. Similarly where according to the Articles of Association a notice was to be deemed to have been served on the fourth day after which it was issued. This article of the company was in conflict with Regulation 79 in the Table. Which provides that a notice should be deemed to have been served on the day on which it would reach the person concerned in the ordinary course of post. Therefore the article was invalid.¹

20. AIR 1958 Punj. 190 (DB) (Nor could such privileges extend beyond the statutory limits).

1. PLD 1956 Lah. 731 = PLR 1956 Lah. 140.